

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE SAN FRANCISCO, CA 94102-3298 **FILED** 02/19/20 09:36 AM

February 19, 2020

Agenda ID # 18182 Ratesetting

TO PARTIES OF RECORD IN APPLICATION 12-04-019:

This is the proposed decision of Administrative Law Judge Haga. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's March 26, 2020 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:ilz

Decision PROPOSED DECISION OF ALI HAGA (Mailed on 2/19/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

Application 12-04-019

DECISION DENYING COMPENSATION TO WATER PLUS DUE TO A LACK OF SUBSTANTIAL CONTRIBUTION TO DECISION 18-09-017

Intervenor: Water Plus	For contribution to Decision (D.) 18-09-017
Claimed: \$284,745.00	Awarded: \$0.00
Assigned Commissioner: Liane M. Randolph	Assigned ALJ: Robert W. Haga

PART I: PROCEDURAL ISSUES:

A. Brief description	In this decision, the Commission approved a modified
of Decision:	Monterey Peninsula Water Supply Project, adopted settlement
	agreements, issued a Certificate of Public Convenience and
	Necessity, and certified a combined environmental report.

B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:¹

	Intervenor	CPUC Verification
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	June 6, 2012	Verified
2. Other specified date for NOI:		
3. Date NOI filed:	June 18, 2012	Verified
4. Was the NOI timely filed?		Yes

¹ All statutory references are to California Public Utilities Code unless indicated otherwise.

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Showing of eligible customer status (§ 1802(b) or eligible local government entity status (§§ 1802(d), 1802.4):				
5. Based on ALJ ruling issued in proceeding number:	A.12-04-019	Verified		
6. Date of ALJ ruling:	September 27, 2012	Verified		
7. Based on another CPUC determination (specify):				
8. Has the Intervenor demonstrated eligible government entity status?		Yes		
Showing of "significant finan	ncial hardship" (§1802(h) or §1803.1(b)):		
9. Based on ALJ ruling issued in proceeding number:		A.12-04-019		
10. Date of ALJ ruling:		September 27, 2012		
11. Based on another CPUC determination (specify):				
12. Has the Intervenor demonstrated significant financial hardship?		Yes		
Timely request for compensation (§ 1804(c)):				
13. Identify Final Decision:	D. 18-09-107	Verified		
14. Date of issuance of Final Order or Decision:	September 20, 2018	Verified		
15. File date of compensation request:	November 12, 3018	November 13, 2018		
16. Was the request for compensation timely? Yes				

C. Additional Comments on Part I:

#	Intervenor's Comment(s)	CPUC Discussion
9-12	As indicated in the NOI, Water Plus is a Monterey Peninsula water- ratepayer advocacy group. It was formed in September 2010 and has met weekly since then and acted in behalf of local Cal-Am residential ratepayers.	Noted
	No member of Water Plus has any direct economic interest in outcomes of the proceeding.	

PART II: SUBSTANTIAL CONTRIBUTION:

A. Did the Intervenor substantially contribute to the final decision (see § 1802(j), § 1803(a), 1803.1(a) and D.98-04-059):

Internal 2 C1 ' 1	Caracida Da C	CDITC D.
Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed	CPUC Discussion
Contribution(s)	Contribution(s)	
1. Monterey County	5/24/2012 Protest against A.12-	Water Plus argued that
Ordinance. This was a	04-019, p. 3	Cal-Am had not proven
threshold issue and, having	04-019, p. 3	pre-emption and that
little experience with the	5/30/2012 Statement by Water	the Monterey
CPUC in 2012, Water Plus	Plus, p. 3	Desalination Ordinance
hired an attorney to do the	1 1ds, p. 3	was enforceable. D.12-
Opening Brief on the issue.	7/11/2012 Opening Brief on	10-030 rejected that
The Decision addressed the	Preemption, pp. 1-31	position and found the Commission's authority
issue most notably in	711	preempts the Monterey
Conclusion of Law 62.	10/10/2012 Comments on	County Desalination
Because of my limited	Preemption Decision, pp. 1-8	Ordinance. Water Plus
experience on the issue, I		failed to make a
am requesting the lowest	1/9/2013 Water Plus	significant contribution
Hourly Rate Table expert	Comments, pp. 1-3	to the Monterey County Ordinance issue.
rate for my few references	0/4/2010 G	Ordinance issue.
to it in these filings.	9/4/2018 Comments on	
The attorney's rate is for	Proposed Decision, pp. 11-12	
the Opening Brief on		
Preemption.		
2. Demand estimation.	1/21/2014 Opening Brief of	Concerning issue 2 –
This is one of the most	Water Plus, pp. 3-6	Demand estimation, the Commission
important issues	2/14/2014 P. 1. P. C. CW.	specifically rejected
involved in the MPWSP.	2/14/2014 Reply Brief of Water	Water Plus's assertions.
The Decision made	Plus, pp. 4-5	The Commission stated
extensive references to	7/9/2015 Opening Brief, pp. 2-3	that Water Plus's
it, mainly on pages 19-	7/9/2013 Opening Brief, pp. 2-3	analysis failed to take
70 and Findings of Fact	10/20/2015 Water Plus	into account other
12-14, 15-17, 21-25, and	Amendments to Proposal, p. 2	costs, influences, and externalities; and that
29-45, as well as	Troposar, p. 2	Water Plus's assumed
Conclusions of Law 6, 10-17, and 80. As an	1/22/2016 Testimony, pp. 10-12	costs of alternatives
expert with 37 years of	plus Appe X	was flawed.
experience in		Commission concluded
econometrics, I am	3/30/2016 Motion for Project	that Water Plus's
requesting an expert rate	Dismiss, pp. 3-91	approach was not
1 0		

	10/4/2017 P 1 T ::	
at the high end of the	10/4/2017 Proposed Testimony	reasonable. (D.18-09-
scale on the Hourly Rate	(Struck Version), pp. 9-11	017 at p. 64-65).
Table Challenging the	11/13/2017 Reinstated Stricken	
Decision's conclusions,	Testimony, p. 1	
which concur		
with Cal Am's, my	12/15/2017 Opening Brief of	
analysis shows that the	Water Plus, pp. 2-8	
approved project would		
provide a large and	1/9/2018 Reply Brief of Water	
costly oversupply of	Plus, pp. 4-8	
water in the near term.		
The CPUC should have	2/19/2018 Water Plus	
required a panel of	Motion to Strike, pp. 1-4	
economists to review the	plus Appendix	
demand estimates made		
by Cal Am engineers, as	4/19/2018 Opening Brief of	
Water Plus suggested in	Water Plus (amended), pp. 2-	
these filings. I believe	5	
the CPUC was too much		
concerned with an	5/3/2018 Reply Brief of	
undersupply to take	Water Plus, pp. 4-5	
steps to avoid a large	711	
oversupply, which could	5/11/2018 Conditional Joinder	
be highly costly to Cal	of Water Plus, pp. 1-2	
Am or ratepayers, or	711	
both. In particular, the	5/31/2018 Water Plus Motion to	
Decision failed to	Strike, pp. 1, 2, 8	
acknowledge the	711 7 7 -	
economic relationship,	6/15/2018 Water Plus Response	
observed over and over	to	
in these Water Plus	MCWD Request, pp. 1-2	
filings and demonstrated	··	
with actual Monterey	9/4/2018 Comments on	
Peninsula data	Proposed Decision, pp. 3-11, 25	
(see filings' appendices),	, pp. 5 11, 2 5	
that demand goes down	9/10/2018 Reply Comments on	
as rates go up. This issue	Proposed Decision, pp. 1-4	
is subject to litigation,	Troposed Decision, pp. 1	
which acceptance of the		
advice in these Water		
Plus filings could have		
avoided.		
3. Agency Act and	7/14/2015 Opening Brief, pp.	
Return Water. This has	14-17	Water Plus claims to
been a critical issue	17 1/	have made significant
occii a ciiticai issuc		contribution to the

because of the Agency Act's prohibition of the exportation of groundwater from the Salinas Valley. The Decision addresses this issue on pages 103-112 and Findings of Fact 66-70, 146-148, and 188-196, as well as Conclusions of Law 29, 61, 68-69, 83, and 86. In my CPUC filings, I have devoted considerable attention to this issue. As I have indicated in these filings for Water Plus, the Decision has made a substantial error in concluding that the percentage of return water is equal to the percentage of freshwater in the source water (e.g., 7%) when it is equal to a multiple of that value, in fact approximately three times that value (21%) as a percentage of desalinated water delivered to the Monterey Peninsula, the reason being that source water is about three times the amount of delivered water. Because of my extensive background in statistics, I am requesting a compensation rate at the high end of the Hourly Rate Table expert scale. This issue is subject to litigation, which acceptance of the advice

11/22/2016 Testimony, pp. 2-5

6/28/2016 Comments on Return Water Agreement, pp. 6-7

8/5/2016 Reply to Comments on Return Water, pp. 1-9

8/22/2016 Response to Motion to Strike, pp. 1-3

6/1/2017 Motion to Dismiss, pp. 13-18

10/31/2017 Proposed Testimony (Struck Version), pp. 25-28

12/8/2017 Comments on HWG Final Report, pp. 1-18

12/15/2017 Opening Brief of Water Plus, pp. 11-12

1/9/2018 Reply Brief of Water Plus, pp. 8-13

2/14/2018 Ex Parte Communication, p. 1

4/19/2018 Opening Brief (amended), pp. 8-17

5/3/2018 Reply Brief of Water Plus, pp. 6-8

5/31/2018 Water Plus Motion to Strike, pp. 4-5

9/4/2018 Comments on Proposed Decision, p. 12 Return Water issue (Issue 3). To the contrary, Water Plus not only failed to make a significant contribution, but now asserts that D.18-09-017 made a substantial error regarding the return water percentage (Claim at p. 6-7). The Commission did not rely on Water Plus's position in any significant way.

otest against A.12- Water Plus failed to make a significant contribution to the Water Rights issue. Water Plus did not substantially contribute to the issue of water
make a significant contribution to the Water Rights issue. Water Plus did not substantially contribute
make a significant contribution to the Water Rights issue. Water Plus did not substantially contribute
make a significant contribution to the Water Rights issue. Water Plus did not substantially contribute
rights because the Commission did not adopt any portion of any argument made by Water Plus.
ponse to Common ine, p. 3 ening Brief, p. 5 mment on Data DEIR, pp. 1-11 Water Plus failed to make substantial contribution on the issue of Modeling and Data Corruption. Data corruption was not established and was not a factor in any
)

half a century of experience and hold two patents in the field. This background justifies my request for compensation at the high end of the Hourly Rate Table scale. Mostly on pages 11, 17-19, and 71, as well as Findings of Fact 100-103,116, 122-124, 191, and 195 and Conclusions of Law 25-27, 35-39, and 44, the Decision hardly addresses this issue, despite its importance. In these filings and comments on the EIR, Water Plus is largely responsible for the three-year delay and revisions of what remains to be a terriblyflawed EIR. The major finding in the extensive Water Plus attention to this issue in these filings and EIR comments is that the data used to evaluate the first two models employed by consultants had been seriously corrupted, while the last model used has undergone no evaluation of its validity in application to test-well and monitoring-well data. The final EIR conclusions have no solid basis. As I recommended in the later filings cited here, the CPUC should have required a panel of

9/4/2015 Data Request 4 to CPUC, p. 1

9/28/2015 Comments on Data Tampering, pp. 1-12

10/13/2015 Motion on Data Tampering to Dismiss, pp. 1-13

10/30/2015 Demand for Discovery Evidence, pp. 1-19

12/7/2015 Discovery Request (Increased Specificity), 1-17

3/30/2016 Project Dismissal, pp. 16-18

4/21/2016 Reply to Response to Motion to Dismiss, pp. 7-10

2/17/2017 Support of Motion to Recirculate EIR/EIS, pp. 1-6

6/1/2017 Motion to Dismiss, pp. 1-12

5/3/2018 Reply Brief of Water Plus, pp. 5-6

5/31/2018 Motion to Strike, pp. 2-3

9/4/2018 Comments on Proposed Decision, pp. 13-22 Commission decision. As part of D.18-09-017, the Commission specifically found that Water Plus provided no direct evidence in support of the data tampering accusations and the evidence indicated "that the data tampering accusations are false." (D.18-09-017, Appendix J, Responses to Comments Received After Publication of MPWSP Final EIR/EIS, p. 2, as cited by Cal-Am in its Response at 8.)

professional statisticians to review the data analysis. Hydrogeologists do not have sufficient expertise in statistics to do that. This issue is subject to litigation, which acceptance of the advice in these Water Plus filings to dismiss this proceeding could have avoided. None of Water Plus's 5/29/2012 Protest against 6. Project alternatives. recommendations A1204019, pp. 7-8 Minimizing the unique regarding alternatives problems of the or claims regarding 5/30/2012 Statement by Water preferred alternative, the contaminated source Plus, pp. 1-5 Decision addressed this water was adopted by issue mostly on pages the Commission in any 3/21/2013 Revised Testimony, 78-79 and Findings of ruling or decision in pp. 3-9 Fact 18-20, 26-28, 75this proceeding. 78, and 93-97, as well as 8/1/2013 Comments on Conclusion of Law 9. Settlement Agreement, pp. 1-8 The concerns of Water Plus on this issue 8/22/2013 Response to Motion focused on (a) the highly to Bifurcate, pp. 1-7 risky inexperience with slant-well use relative to 1/21/2014 Opening Brief, pp. 1the vast experience with 11 open-ocean intake and on (b) the contamination 2/14/2014 Response to of irrigation water with Common Briefing Outline, pp. pesticides in the source 1-13 water Pure Water Monterey recycles for 6/1/2015 Response to Common irrigation use without Briefing Outline, p. 4 Advanced treatment, according to a side deal 7/14/2015 Opening Brief, pp. with Monterey County. 19-22 Because I have devoted considerable time to this 1/22/2016 Testimony, pp. 1-14 issue in preparation for these Water Plus filings, 3/30/2016 Project Dismissal, I am requesting a rate in pp. 1-19 the midrange of the

Hourly Rate Table scale.		
	4/21/2016 Reply to Response to Motion to Dismiss, pp. 3-5	
	5/19/2016 Rebuttal Testimony, pp. 13 7/10/2017 Statement by Water Plus, pp. 1-8	
	10/4/2017 Proposed Testimony (Struck Version), pp. 2-4	
	5/3/2018 Reply Brief, pp. 8-10	
	5/11/2018 Conditional Joinder, pp. 1-3	
	8/19/2018 Opening Brief (amended), pp. 7-8	
	9/4/2018 Comments on Proposed Decision, pp. 22-23	

B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

		Intervenor's Assertion	CPUC Discussion
a.	Was the Public Advocate's Office at the California Public Utilities Commission (Cal Advocates) a party to the proceeding? ²	Yes	Verified
b.	Were there other parties to the proceeding with positions similar to yours?	Yes	Verified
c. If so, provide name of other parties: Marina Coast Water District, City of Marina, Public Water Now, Citizens for Just Water, Public Trust Alliance, Planning & Conservation League.		Verified	
d. Intervenor's claim of non-duplication: Although all the above parties in common with Water Plus opposed Cal Am's desal project, Water Plus was virtually unique in its arguments on			Noted

² The Office of Ratepayer Advocates (ORA) was renamed the Public Advocate's Office at the California Public Utilities Commission (Cal Advocates) pursuant to Senate Bill 854, which the Governor approved on June 27, 2018.

demand estimation, return water, water rights, model evaluation,	
recycling, and subsurface intake.	

PART III: REASONABLENESS OF REQUESTED COMPENSATION:

A. General Claim of Reasonableness (§ 1801 and § 1806):

a. Intervenor's claim of cost reasonableness: I have a separate reason for each issue because I am a highly qualified expert on some but not others. See my comment on each issue above. Generally, I have a Ph.D. from Princeton University	CPUC Discussion Water Plus has not made substantial contribution to
and over a half-century of experience in statistical modeling and 37 years of experience in econometrics, both fields highly relevant to issues in the proceeding. I have two patents in statistical modeling and am listed in Marquis' Who's Who in California, Who's Who in America, and Who's Who in the World. I am identified as Expert 1 and Preparer 1 in the table below. I am not claiming cost for travel.	the outcome of Decision 18- 09-017
b. Reasonableness of hours claimed: The hours I spent depended on how much research I had to do to prepare for each CPUC filing. I got into each issue as deeply as I could. This proceeding has gone on for longer than six years, and Water Plus, which I founded and have served as president, was one of the first parties to join the proceeding.	Water Plus has not made substantial contribution to the outcome of Decision 18- 09-017
c. Allocation of hours by issue: Issue 1, 90 hours; Issue 2, 152 hours; Issue 3,176 hours; Issue 4, 6 hours; Issue 5, 226 hours; Issue 6, 129 hours.	Not Reviewed

B. Specific Claim:*

	Claimed						CPUC Aw	ARD
		ATT	ORNEY,	EXPERT, AN	D ADVOCATI	E FEES		
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Paul Hart Attorney	2013	62.5	\$320	See below	\$20,000.00			
Weitzman Expert	2012	4	\$165	See Issue 4	\$660.00			
Weitzman Expert	2013	26	\$135	See Issue 1	\$3,510.00			
Weitzman Expert	2013	10	\$165	See Issue 6	\$1,650.00			
Weitzman Expert	2014	14	\$420	See Issue 2	\$5,880.00			
Weitzman Expert	2014	17	\$170	See Issue 6	\$2,890.00			
Weitzman Expert	2015	8	\$420	See Issue 2	\$3,360.00			
Weitzman Expert	2015	6	\$420	See Issue 3	\$2,520.00			
Weitzman Expert	2015	146	\$420	See Issue 5	\$61,320.00			
Weitzman Expert	2015	9	\$170	See Issue 6	\$1530.00			
Weitzman Expert	2016	20	\$425	See Issue 2	\$8,500.00			
Weitzman Expert	2016	52	\$425	See Issue 3	\$22,100.00			
Weitzman Expert	2016	18	\$425	See Issue 5	\$7,650.00			
Weitzman Expert	2016	28	\$170	See Issue 6	\$4,760.00			
Weitzman Expert	2017	40	\$435	See Issue 2	\$17,400.00			
Weitzman Expert	2017	70	\$435	See Issue 3	\$30,450.00			
Weitzman Expert	2017	36	\$435	See Issue 5	\$15,660.00			

TOTAL REQUEST: \$284,745.00				TOT		D: \$0.00 [A]		
				Subtoto	al: \$5,040.00		Su	btotal: \$0.00
Lapert				rate for Experts				
Weitzman Expert	2018	56	\$90	1/2 2018	5,040.00			
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
	IN	TERVEN	OR COM	PENSATION	CLAIM PREP	ARATIO	N **	
				Subtotal:	\$279,705.00		Subtoto	al: \$0.00 [A]
Weitzman Expert	2018	10	\$180	See Issue 6	\$1,800.00			
Weitzman Expert	2018	26	\$445	See Issue 5	\$11,570.00			
Weitzman Expert	2018	2	\$180	See Issue 4	\$360.00			
Weitzman Expert	2018	48	\$445	See Issue 3	\$21,360.00			
Weitzman Expert	2018	70	\$445	See Issue 2	\$31,150.00			
Weitzman Expert	2018	2	\$150	See Issue 1	\$300.00			
Weitzman Expert	2017	19	\$175	See Issue 6	\$3,325.00			

*We remind all intervenors that Commission staff may audit the records and books of the intervenors to the extent necessary to verify the basis for the award (§1804(d)). Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenor's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

**Travel and Reasonable Claim preparation time are typically compensated at $\frac{1}{2}$ of preparer's normal hourly rate

ATTORNEY INFORMATION						
Attorney	Date Admitted to CA BAR ³	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation			
Paul Lester Hart	September, 2005	237766	No			

³ This information may be obtained through the State Bar of California's website at http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch.

C. Attachments Documenting Specific Claim and Comments on Part III:

Attachment or Comment #	Description/Comment
1.	Certificate of Service
2.	Time Records
3.	Qualifications of Expert 1

D. CPUC Comments, Disallowances, and Adjustments:

Item	Reason
[A]	The Intervenor Compensation Claim is denied for Water Plus due to lack of
	substantial contribution to Decision 18-09-017.

PART IV: OPPOSITIONS AND COMMENTS:

(Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (see § 1804(c)))

A. Opposition: Did any party oppose the Claim?	Yes	

Party	Reason for Opposition	CPUC Discussion
California-American Water Company	Water Plus has not met the requirements to receive intervenor compensation and should be denied.	Lack of substantial contribution from Water Plus.
Water Plus	Response to California-American Water Company's opposition.	Response noted.

B. Comment Period: Was the 30-day comment period waived	No
(see Rule 14.6(c)(6))?	

Party	Comment	CPUC Discussion

FINDINGS OF FACT

Water Plus has failed to make a substantial contribution to D.18-09-017.

CONCLUSION OF LAW

Water Plus failed to satisfy all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

- The intervenor compensation claim filed by Water Plus is rejected.
 The comment period for today's decision is not waived.
- This decision is effective today.

 Dated ______, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation		Modifies Decision?	No
Decision:			
Contribution	D1809017		
Decision(s):			
Proceeding(s):	A1204019		
Author:	ALJ Haga		
Payer(s):	California-American Water Company ratepayers		

Intervenor Information

Intervenor	Date Claim	Amount	Amount	Multiplier?	Reason
	Filed	Requested	Awarded		Change /
					Disallowance
Water Plus	11/13/2018	\$284,745.00	\$0.00	N/A	Lack of
					substantial
					contribution

Hourly Fee Information

First	Last Name	Attorney,	Hourly Fee	Year Hourly	Hourly Fee
Name		Expert, or	Requested	Fee Requested	Adopted
		Advocate			
Paul	Hart	Attorney	\$320.00	2013	Not Addressed
Ron	Weitzman	Expert	\$165.00	2012	Not Addressed
Ron	Weitzman	Expert	\$135.00-	2013	Not Addressed
			\$165.00		
Ron	Weitzman	Expert	\$170.00-	2014	Not Addressed
			\$420.00		
Ron	Weitzman	Expert	\$170.00-	2015	Not Addressed
			\$420.00		
Ron	Weitzman	Expert	\$170.00-	2016	Not Addressed
			\$425.00		
Ron	Weitzman	Expert	\$175.00-	2017	Not Addressed
			\$435.00		
Ron	Weitzman	Expert	\$150.00-	2018	Not Addressed
			\$445.00		

(END OF APPENDIX)